REMARKS

At the outset, the Applicant and the undersigned thank the examiner and her supervisor for the telephonic interview held on May 21, 2007 regarding this application. In that phone interview, the recent decision by the Board was discussed, including the new reference mentioned in the Board's decision, namely Lyric Energy, Inc. Form 8K, Securities and Exchange Commission, April 10, 1997 (referred to hereinafter as "Lyric Energy 8K filing").

By this amendment, the Applicant has clarified the claimed invention. Independent claim 27 has been amended to clarify that the claimed method is directed to a method of offering stock of a privately-held company and comprises the steps of:

> disclosing, prior to an initial public offering by the privately-held company, the number of shares to be offered in the initial public offering by the privately-held company, that the initial public offering will occur in two or more successive offering stages, the number of shares to be offered in each offering stage, the amount of time between successive offering stages, and pricing information for the shares to be offered in each offering stage;
>
> offering a first portion of the shares of the stock of the offering in a first offering stage to investors; and
>
> offering the remainder of the shares of the offering to investors in separate portions over the subsequent one or more offering stages,
>
> wherein at least some communications regarding the offering of the shares over the offering stages are made via a computer network.

Support for the amendments may be found throughout the application as originally filed.

The Lyric Energy 8K filing does not anticipate claim 27. First, the Lyric Energy 8K filing does not concern an initial public offering (IPO), but rather concerns a share exchange between shareholders for two different companies. In the described exchange, shareholders of the registrant, Lyric Energy, are to exchange their shares of Lyric Energy stock for shares of Natural Gas Technologies, Inc. (NGT). The share exchange described in the filing is to occur in

two stages. In the first stage, directors, officers, affiliates, and sophisticated investors holding NGT stock are to exchange their shares, which account for about 80% of NGT's outstanding shares. In the second stage, the holders of the other 20% of NGT's outstanding shares (referred to hereinafter as "non-inside investors") are to exchange their shares. The second stage is not to occur until "approval by NGT shareholders of the exchange of the remaining shares pursuant to an S-4 Registration Statement ..." See Lyric Energy 8K filing at 3. Thus, the exchange is structured to occur in two stages so that the non-inside investors participating in the second stage can review the SEC filing describing the exchange to make an informed decision about whether to approve the exchange. The two stages in the Lyric Energy 8K filing have nothing to do with a stock offering, but rather the two stages are used merely to allow all of the differently-situated shareholders of NGT to participate in the exchange in a timely and legal manner.

Second, not only does the Lyric Energy filing not concern an IPO, the proposed share exchange is arguably the opposite of an IPO. The proposed exchange is designed to ***reduce*** the number of outstanding shareholders by doing a 1 to 231.2433 reverse stock split. This means that after the reverse stock split, shareholders of Lyric Energy who previously had 231 or fewer shares will have zero (0) shares after the reverse stock split. Basically, the reverse stock split eliminates shareholders who held small amounts of stock, in this case 231 or fewer shares. An IPO is designed to do the exact opposite – to open stock ownership of the company going public to all public investors through a public offering, thereby increasing the number of shareholders.

Third, the Lyric Energy filing does not even purport to address a price setting mechanism in the exchange. This is because the price was already set by the conversion of $100,000 debt into equity in the exchange. Thus, the Lyric Energy filing gives no suggestion whatsoever of the

various pricing mechanisms available with the process of the present invention, which pricing mechanisms seek to address the underpricing problem in IPO's.

For at least these reasons, the Lyric Energy 8K filing does not anticipate claim 27 or its dependent claims.

In addition, the combination of Macklin[1] and the Lyric Energy 8K filing would not render the claimed invention obvious for several reasons, including the following:

- ***First***, Macklin and the Lyric Energy 8K filing are not in the same field of endeavor. Macklin concerns IPOs, whereas the Lyric Energy 8K filing concerns a share exchange. These are completely different types of transactions, and the techniques of one cannot be readily applied to the other. In IPOs, a company is issuing its shares to public investors. In a share exchange, shareholders of one stock are merely exchanging their shares for shares of another stock. For this reason, a person having ordinary skill in the art, trying to devise a solution to reduce money left on the table in an IPO, would not look to the Lyric Energy 8K filing for help. The Lyric Energy 8K filing simply pertains to a non-analogous issue. *See* MPEP 2141.01(a) ("In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned.").

- ***Second***, Macklin could not be modified in view of the Lyric Energy 8K filing because to do so would render Macklin's seasoning strategy inoperative for its intended purpose. *See* MPEP § 2143.01 ("If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to

[1] "Macklin" refers to Macklin, Gordon S., "Going Public and the NASDAQ Market," The NASDAQ Handbook, 1992 edition. In the Board's decision of May 1, 2007, the Board reversed the Office's rejection of the pending claims as being obvious over Macklin and the Applicant's admitted prior art.

make the proposed modification."). The stated purpose of Macklin's seasoning strategy is to issue a small amount of stock in an initial offering, and then, some indeterminate time afterward, issue a larger number of shares in a subsequent (or "seasoned") offering so that companies whose initial offering is "under pressure because of difficult market conditions or because the company is not well known and is perceived as higher risk" does not have to issue all of the stock it intends to issue during the difficult market conditions of the first offering. *See* Macklin at 103. That way, after the initial "conservative valuation," the company can "allow the stock to become better known in the investment community" before doing the seasoned offering. *See id.* In this time period between offerings, the stock may appreciate due to improving market conditions or the company may build credibility with investors, thereby allowing the seasoned offering to be at a higher valuation than the second offering. *See id.* Thus, a critical component of Macklin's seasoning strategy is some indeterminate period of time between the two offerings when, hopefully, other material events will occur to positively affect the value of the stock, such as improving market conditions or the company becoming better known to the investment community. It would absolutely defeat the purpose of Macklin's seasoning strategy if a company pursuing Macklin's seasoning strategy had to lock in the subsequent offering, especially in terms of (i) when to make the subsequent offering, (ii) how many shares to be offered in the subsequent offering, and (iii) the price of the shares to be offered (even if a market price), prior to the initial offering. This is because the stock may not only fail to appreciate in the time period between offerings, but it may significantly depreciate after the initial offering in Macklin, in which case the offering company may be locked in to a second offering which is at a bargain basement market price, which can have adverse and even catastrophic effects on the company. Thus, it would defeat the very purpose of Macklin's seasoning strategy if the

company had to lock in the seasoned offering prior to the initial offering. Macklin's strategy is premised on a "wait-and-see" approach. If a company using Macklin's strategy would be committed to the seasoned offering no matter how the seasoning (i.e., the time period between offerings) turned out, it would defeat the flexibility built into the Macklin strategy.

- ***Third***, in a related manner, Macklin teaches away from the method recited in claim 27. Macklin's seasoning strategy teaches to let the shares issued in the first offering to season for a period of time to see how they do in the market before deciding to do a follow-on offering. If the second (or subsequent) offering was a predetermined and predisclosed period of time after the first (or prior) offering, it would not matter how the stock seasons. Thus, a person having ordinary skill in the art, reading Macklin as a whole, would not be motivated to realize the process of claim 27 because Macklin's "wait-and-see" seasoning strategy teaches away from the claimed process. *See* MPEP § 2141.02 ("A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention.").

- ***Fourth***, attempting to solve the problem of leaving too much money on the table in an IPO does not inevitably lead to the process of claim 27. Leaving too much money on the table is a persistent problem with IPOs, and many solutions have been proposed to address this problem. One option is Macklin's seasoning strategy, which is not really a solution because it does not address the underpricing problem and which the Board found does not render the claimed process obvious. Another solution is the OpenIPO Dutch auction method, from W.R. Hambrecht & Co., LLC (see www.openipo.com), described in the Background section of the present application. In such an offering, investors who wish to buy stock in the IPO submit to a subscribing underwriter of the offering a secret, on-line bid for the number of shares they desire. The bids may be above or below a price set by the underwriter, and the offering company sells

its stock at the lowest bidding price that will enable the company to sell all of the shares it is offering. Yet another solution is the modified auction used by Google when it went public in August 2004. *See* www.google-ipo.com. The rationale for the auction was that a fair, open auction would inherently align the issue price with market demand for the stock. Thus, although there are market forces to compel innovation in addressing the problem of leaving too much money on the table, the solutions are varied and the claimed solution is not an obvious solution to the problem. Rather, the claimed solution involves an extraordinary amount of creativity.

For at least these reasons, claim 27 and its dependent claims are not obvious in view of Macklin and the Lyric Energy 8K filing.

Early examination of the pending claims in light of the above amendments and remarks is respectfully requested. The Office is invited to contact the undersigned with questions regarding this application or this Amendment.

Respectfully submitted,

Date: 5 June 2007

Mark G. Knedeisen
Reg. No. 42,747

KIRKPATRICK & LOCKHART PRESTON GATES ELLIS LLP
Henry W. Oliver Building
535 Smithfield Street
Pittsburgh, PA 15222

Ph. (412) 355-6342
Fax (412) 355-6501